



NIESEN|PRICE|WORTHY|CAMPO

June 21, 2018

Sent via E-Mail to: (masseybe@cityofgainesville.org)

Chair, City Plan Board
City of Gainesville
c/o Bedez E Massey, Planner
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RE: Petition PB-17-158 ZON (NW 43rd Street/NW 23rd Avenue Rezoning)

Dear Chairperson,

As you know, I have the pleasure of representing nineteen persons who are “affected parties” in connection with the subject petition. At the April 26 meeting the Board took action on a related petition requesting a change to Future Land Use, voting 6-0 to recommend disapproval. The subject agenda item on rezoning was continued to the May 24, meeting, and then again to the June 28 meeting.

The land owner has recently submitted a letter to City staff, dated June 15, 2018, in which they request that *City staff* place the subject application for re-zoning “on hold.” City Staff has forwarded the letter to the Plan Board for consideration, recommending approval. The Plan Board Staff Report does not include reasoning or analysis to support their recommendation. **On behalf of the affected parties, we object to any further delay of the Plan Board’s consideration of and action on Petition PB-17-158 ZON (NW 43rd Street/NW 23rd Avenue Rezoning). We request the Plan Board proceed with its action on this agenda item as soon as practical to do so.**

Previous Delays. The subject item was previously placed on last month’s agenda. On the morning of the meeting, applicant delivered a letter requesting a “deferral” of the subject petition, without requesting any specific duration of the “deferral.” The words “deferral” and “defer” do not appear anywhere in the rules of the City Plan Board or in the Land Development Code. During the May 24 Plan Board Hearing, the Board interpreted the May 23 applicant letter as a request for delay of the Board’s consideration of subject item. No representative of applicant appeared to present or explain the item. The affected parties opposed the request for deferral. During their discussions on the letter, Board members commented that the two agenda items (LUC & ZON) are related, that their prior action on the Land Use item may restrict what result is even possible on the Zoning item, and more than one Board Member expressed the desire to



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just get to the end of the zoning item consideration. Eventually, the Board voted to “defer” or “continue” the agenda item to the next regular Plan Board meeting, noting applicant’s letter did not request any specific duration of delay. In accordance with the Board’s vote, the “deferred” item was placed on the draft agenda for the June 28, 2018, Plan Board Meeting.

Current Request. On Wednesday, June 20, 2018, City staff provided me a copy of CHW letter to the Director, Department of Doing. The CHW letter is not addressed to the Plan Board, but to City staff. The CHW letter requests Petition PB-17-158 ZON be placed “on hold” for an unspecified period. The only reasons given for the request are “so the agent and applicant can address project-related items prior to Public Hearing.” The stated “reason” for the request is unsupported by the record, as applicant and its agent have been free to “address project-related items” since well before the petition was the subject of a neighborhood workshop last November and well before the applications were submitted last December. No party involved, nor City staff nor the Plan Board are preventing applicant and its agent from addressing with each other all the project-related issues they desire. Placing the item “on hold” will not improve applicant’s and agent’s ability to interact. They can do so now, and have had the ability to fully “address project-related items” with each other since November, 2017.

The applicant’s current request for “on hold” status does not appear to comply with any City law or rule. I have searched through Gainesville’s Land Development Code for the terms “on hold” or “pause.” They do not appear there, nor do those terms appear anywhere in the rules of the City Plan Board, as approved by the City Commission. This agenda item has appeared on Plan Board Agendas going back to March 22, 2018. At each meeting, the Board has taken action to re-schedule the item for a future meeting, even when applicant has provided no reasons or rationale for the requested delay. The Board certainly has authority to manage its agenda as it sees fit, but also has a duty to consider and act on agenda items forwarded to it within a **reasonable time period**. This application was submitted on December 7, 2017. It has appeared on the agenda of the Plan Board on March 22, April 26, May 24 and now June 28, 2018. The affected parties, like applicant, are entitled to due process. The letter and spirit of the rules of the Plan Board, as approved by the City Commission, put the affected parties on an equal level of participation as the applicant and City staff. *See* Plan Board Rules, Art VIII, Quasi-Judicial Hearings, 4(b). The affected parties, and the community as a whole, have a due process right to see the procedures put in place by the City of Gainesville continue to a timely conclusion. Applicant now asks the Board to take the opposite approach, requesting this duly proffered agenda item be placed “on hold” for an unlimited time, freezing our City’s lawful procedures and stripping affected parties and citizens of the established procedure. Even more troubling, it appears applicant is asking to freeze, suspend, or put “on hold” activity at a time when the properly functioning process seems headed for a final result they disfavor. Is applicant hoping to wait out its opposition in the community, as citizens tire of the energy and effort to follow an item which is postponed indefinitely? Is applicant seeking to wait out the current terms of Plan Board members who have voted against the related land use application? Is applicant hoping to keep the item “on hold” until a friendlier group of members are appointed to the Board?

City Staff Interpretation. Equally troubling to the affected parties is our understanding of how City staff is interpreting the current request to place the zoning petition “on hold.” Staff

has informed me that if the Plan Board grants the current request, then City staff will effectively place both related petitions “on hold.” In other words, if applicant’s current request is granted by the Board, City staff will hold onto both **Petition PB-17-158 ZON – AND Petition PB-17-157 LUC**. Staff intent would be to hold onto the Plan Board’s previous Land Use recommendation; they would NOT forward your decision to the City Commission for their consideration and vote – for an unknown and indefinite time period. Such action would dramatically contravene the Land Development Code and the Rules of the City Plan Board.

It is unfortunate this applicant has put City staff in such a precarious position as to be considering actions this far outside the norm. City staff did not create this problem, nor did the Plan Board or affected parties. We find ourselves in this unique situation because applicant refuses to proceed as outlined by our City’s laws and your Plan Board’s normal rules. Applicant continues to request delay for no justifiable reason, using terms not found in the laws or rules. The applicant appears unwilling or unable to make basic, hard decisions. They could withdraw one or both applications. They could request to modify one or both applications. They could proceed forward in a timely manner with the current applications, through Plan Board action and through City Commission consideration and vote. Instead, applicant refuses to make any decision, shifting the burden of inconvenience, cost and delay to the other parties involved. We need to see this matter to the end, not delay it or ignore it. Ignoring hard choices do not make them disappear. The choices only get harder with inaction and inattention.

The affected parties object to any further delay of the Plan Board’s consideration of and action on Petition PB-17-158 ZON (NW 43rd Street/NW 23rd Avenue Rezoning). We understand applicant’s unusual request for “on hold” status may prevent City staff and the Board from being prepared to fully consider and take action on this petition as scheduled on June 28, 2018. If so, we respectfully request applicant’s request be denied, and this agenda item be set for full quasi-judicial hearing at the next regular Plan Board hearing in late July, 2018. By copy of this letter, the affected parties request City staff be fully prepared to conduct a quasi-judicial hearing at the Plan Board meeting set for late July, 2018. We will bring a fully qualified notary public to the meeting, to perform duties as required by the Board, at our expense, in case the regular notary public is not available at the meeting.

Respectfully submitted,



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DN/mp

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